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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Chapter 7
BK Case No.: 16-23698
ADV Case No.:

In Re:

James S Bergesen
Plaintiff

COMPLAINT FOR DISCHARGE OF STUDENT LOAN DEBT PURSUANT TO 11 U.S.C. 523(a) (8)

United Student Aids Funds a/k/a USA Funds, and Navient

Defendants

The plaintiff, JAMES S BERGENSEN (hereinafter the “plaintiff”) by his attorneys Law Offices of Michelle Labayen PC, as and for his complaint against the defendants United Student Aids Funds a/k/a USA Funds, and Navient (hereinafter “defendants) alleges as follows upon information and belief:

PRELIMINARY STATEMENT

1. This is an action for determination of the dischargeability of the Debtor’s Student loans to the above listed defendants.
2. The Debtor filed for Chapter 7 relief on December 10, 2016 in order to have his unsecured debt discharged with the hope of making his student loan payments affordable.
3. The Debtor encountered additional hardships, primarily the reduction of employment and instability with part-time /temporary employment due to illness, creating an inability for the debtor to pay off his student loans.
4. The debtor fell behind on his payments and currently the loans are in default status.

5. The debtor does not dispute that he requested and received the loans from Sallie Mae and other and Federal family educational loans as well as private loans that were assigned and/or purchased by USA Funds for the current amount of approximately $100,557.21
6. The debtor attempted to make payments for multiple years at the expense of his ordinary and necessary expenses.
7. The obligations listed in paragraph 5 are made under a program funded in whole or in part by a government unit.
8. Plaintiff is informed and believes that accepting the obligations set forth in paragraph 5 will impose an undue hardship on the Plaintiff.
9. As a result of the obligations set forth in paragraph 5 above, Plaintiff owes Defendants, based on information and belief, approximately $100,557.21 dollars.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this proceeding pursuant to 11 U.S.C §§1334 (b), 11 U.S.C § 523(a) (8) and Federal Rule of Bankruptcy Procedure 7001(6); this is a core proceeding under 28 U.S.C §157 (b) (2) (1). Venue is properly laid pursuant to 28 U.S.C §1409(a).

PARTIES

11. The plaintiff is an adult resident of the State of New York, County of Westchester.
12. United Student Aids Funds ("USA Funds") is a provider duly authorized and qualified to do business in the State of New York and is located at 9998 Cross point Boulevard suite 400 Indianapolis IN 46256
13. Navient is a provider duly authorized and qualified to do business in the State of New York and is located at 123 Justison Street Wilmington DE 19801

FACTUAL BACKGROUND

14. The Debtor filed for Chapter 7 relief on December 10, 2016 ECF No.: 1
15. The Debtor provided notice to all creditors and of importance to the defendants listed above.
16. The Debtor appeared at the 341 meeting, and the hearing was closed with the trustee filing a Notice of Abandonment.
17. The Debtor meets the Burdens as outline by In re *Marie Brunner v. New York State Higher Education Services Corporation* 831 F. 2d 395, 1987 The Court required a showing that (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.

WHEREFORE, Plaintiff respectfully request that the Court determine that Plaintiff's obligations and debts to Defendants, including but not limited to, the amounts listed above and all appropriate interest, costs and attorneys fees are discharged pursuant to 11 U.S.C 523 (a)(8) and for such other relief that the court deems just.

April 20, 2017

/s/ Michelle Labayen
Michelle Labayen
Attorney for the Debtor

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Defendants

AFFIDAVIT

The undersigned petitioner, JAMES S BERGESEN does hereby make a solemn oath that the statements contained therein and in the Petition to Discharge Student Loans are true and correct according to the best of her knowledge, information and belief.

/S/ *James S. Bergesen*
JAMES S BERGESEN

SWORN TO AND SUBSCRIBED
BEFORE ME, NOTARY, on this
27 day of February 2017.

/s/ *Michelle Labayen*
Michelle Labayen 2960
NOTARY PUBLIC NEW YORK STATE

Exp 10/2018